IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1904.

No. 139.

THE FIRST NATIONAL BANK OF CHICAGO, H. W. ROGERS and JAMES C. ROGERS, as H. W. ROGERS & BROTHER, *Petitioners,*

vs.

THE CHICAGO TITLE & TRUST COMPANY, Trustee of ALEXANDER RODGERS, bankrupt, THE NATIONAL STORAGE COMPANY, JAMES A. PATTEN, FRANK E. WINANS, and E. W. BAILEY & COMPANY, *Respondents.*

CERTIORARI.

To Messrs. Henry S. Robbins and Wallace Heckman,
Counsel for Petitioners:

PLEASE TAKE NOTICE, that on Monday, the 5th day of December, A. D. 1904, at twelve o'clock noon, or as soon thereafter as counsel can be heard, at the Court Room in Washington, these respondents will move the court, as per printed motions and suggestions supporting the same, herewith served upon you.

Respectfully,

JOSEPH E. PADEN and
NEWTON WYETH,
Counsel for Respondents, the Chicago Title & Trust Company, Trustee, and James A. Patten.

RECEIVED copies of the foregoing notice, and of motions and suggestions, this ——— day of November, A. D. 1904.

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Counsel for Petitioners.

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Now come the respondents, The Chicago Title & Trust Company, Trustee, and James A. Patten, by Joseph E. Paden and Newton Wyeth, their counsel, and move this Honorable Court to quash the writ of certiorari returned in this cause, and to dismiss the proceedings thereon.

And in the event that said motion to quash is denied or postponed, to the submission and hearing of said cause in course, respondents show to the court that they desire to file, in due course, their briefs and arguments on the merits of the whole case, and to be heard before the court at the submission of the case.

For grounds of the said motion these respondents show:

(1) That the matters involved and determined in the said cause were controversies arising in bankruptcy pro-

ceedings, as distinguished from proceedings in bankruptcy or administrative acts simply, from the judgment or decree in which controversies in the District Court an appeal lay and was taken to the Circuit Court of Appeals; and from the judgment or decree of the latter court, an appeal or writ of error lay for review in this court, and the requisite jurisdictional amounts were involved.

Circuit Court of Appeals Act of March 3, 1891, Sec. 6.

Sec. XXXVI of General Orders in Bankruptcy of the Supreme Court.

Hewit v. *Berlin Machine Works,* 194 U. S., 296.

(2) The writ of certiorari is not used as a writ of error by this court to review the judgment of an inferior court, and where error or appeal lies for review there is no ground for issuing the writ of certiorari unless it be found in the Act of March 3, 1891, establishing the circuit courts of appeals.

American Construction Co. v. *Jacksonville, etc., Ry. Co.,* 148 U. S., 372.

See, also,

Huguley Mfg. Co. v. *Galeton Cotton Mills,* 184 U. S., 290.

Certiorari does not lie where the remedy by appeal or error is available.

In Re Tampa Suburban R. Co., 168 U. S., 583.

See, also,

Fowler v. *Lindsey,* 3 Dall. (U. S.), 411.

Respectfully submitted.

JOSEPH E. PADEN and
NEWTON WYETH,
Counsel for Respondents, Chicago Title & Trust Company, Trustee, and James A. Patten.